

Message Text

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CINCPACREPPHIL
NAVLEGSVOFF SUBIC BAY

C O N F I D E N T I A L STATE 239047

E.O. 11652:GDS

TAGS: MARR, RP

SUBJECT: PEOPLE OF THE PHILIPPINES V. BARTON ET AL

REF: NAVLEGSVCOFF SUBIC BAY RP 181041Z AUG 76

1. THIS CABLE ADDRESSES QUESTION, POSED PARA 6C REF, OF
APPROPRIATE DIPLOMATIC ACTION, IF ANY, TO BE TAKEN IN
SUBJECT CASE.

2. IT HAS BEEN ASCERTAINED THAT THIS ISSUE HAS BEEN
DISCUSSED RECENTLY WITHIN LEGAL AFFAIRS COMMITTEE (LAC) OF
MUTUAL DEFENSE BOARD AND THAT THE COMMITTEE HAS AGREED ON A
COURSE OF ACTION DESIGNED TO RESOLVE THESE CASES. AS WE
UNDERSTAND IT, A COMPROMISE OFFER WILL BE SUBMITTED
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THROUGH LAC CHANNELS TO THE DIRECTOR OF PHILIPPINE BUREAU

OF INTERNAL REVENUE WHEREBY THE ACCUSED IN THE CRIMINAL SUITS WILL AGREE TO PAY FINES RESULTING FROM THOSE SUITS AND TO LEAVE THE PHILIPPINES IN RETURN FOR GOP AGREEMENT TO WITHDRAW CIVIL SUITS, TO LIFT LIENS ON DEFENDANTS' REAL PROPERTY, AND TO FACILITATE DEPARTURE OF DEFENDANTS FROM THE PHILIPPINES. IT IS FURTHER UNDERSTOOD THAT THE COM-PROMISE OFFER WILL REFER TO THE RECENTLY NEGOTIATED DOUBLE TAXATION CONVENTION WHICH WILL PROVIDE, IN ARTICLE 20 THEREOF, FOR EXEMPTION FROM TAX BY PHILIPPINES OF WAGES AND SALARIES OF U.S. CITIZEN EMPLOYEES OF USG AGENCIES.

3. DEPARTMENT AND DOD ARE CONCERNED WITH RAMIFICATIONS OF BOTH CRIMINAL AND CIVIL SUITS FOR MANY REASONS, PARTICULARLY BECAUSE THEY REPRESENT GOP UNILATERAL INTERPRETATION OF 1947 MBA, THEY ERODE GENERAL PRINCIPLE THAT ONE GOVT DOES NOT TAX INCOME OF OTHER GOVT'S CITIZEN-EMPLOYEES, AND THERE MAY BE A NUMBER OF OTHER DOD EMPLOYEES WHO MIGHT BE SUBJECT TO SIMILAR SUITS BY THE GOP. ACCORDINGLY, IF COURSE OF ACTION AGREED UPON IN LAC PROVES UNSUCCESSFUL, WE BELIEVE THAT WE SHOULD SERIOUSLY CONSIDER A HIGH LEVEL DIPLOMATIC EFFORT, PROBABLY IN THE FORM OF A PERSONAL APPROACH BY AMBASSADOR. WE WOULD LEAVE THE SPECIFIC TIMING AND ARGUMENTATION UP TO YOU BUT NOTE REFERENCE COULD BE MADE TO AGREEMENT IN PRINCIPLE REACHED BY OUR TWO GOVTS IN THE DOUBLE TAXATION CONVENTION NEGOTIATIONS THAT INCOME OR NATIONALS OF ONE GOVT IN THE EMPLOY OF AN AGENCY OF THAT GOVT SHOULD NOT BE SUBJECT TO TAXATION BY THE OTHER GOVT. WE REALIZE THAT NEGOTIATIONS ON THE DOUBLE TAXATION CONVENTION AND RENEGOTIATION OF THE MILITARY BASES AGREEMENT ARE BOTH IN CRITICAL STAGES BUT DO NOT BELIEVE THAT HIGH LEVEL APPROACH WOULD HAVE A DELETERIOUS AFFECT ON THOSE NEGOTIATIONS.

4. EMBASSY'S VIEW ON THIS MATTER WOULD BE APPRECIATED. KISSINGER

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